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8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 RICARDO BERMUDEZ VAQUERO,
12 on behalf of himself and all others
similarly situated,

13 Plaintiff,

14 v.

15 ASHLEY FURNITURE
16 INDUSTRIES, INC., A Wisconsin
Corporation; STONELEDGE
17 FURNITURE LLC, a Wisconsin
Limited Liability Corporation, and
18 DOES 1 through 10, Inclusive,

19 Defendant.
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CASE NO. 12-CV-8590 PA (MANx)

**DEFENDANT STONELEDGE
FURNITURE LLC'S NOTICE OF
MOTION AND MOTION FOR
SUMMARY JUDGMENT OR, IN
THE ALTERNATIVE, PARTIAL
SUMMARY JUDGMENT**

[FED. R. CIV. P. 56; L.R. 7-3, 56-1]

Date: July 24, 2017
Time: 1:30 p.m.
Courtroom: 9A

1 **TO THE HONORABLE COURT, PLAINTIFF RICARDO BERMUDEZ**
 2 **VAQUERO, AND HIS ATTORNEYS OF RECORD:**

3 PLEASE TAKE NOTICE that on July 24, 2017, at 1:30 p.m., or as soon
 4 thereafter as the matter may be heard, in Courtroom 9A of the United States District
 5 Court for the Central District of California, located at First Street Courthouse, 350 W.
 6 1st Street, Courtroom 9A, 9th Floor, Los Angeles, California 90012, Defendant
 7 STONELEDGE FURNITURE LLC (“Defendant”) will, and hereby does move this
 8 Court pursuant to Federal Rule of Civil Procedure 56 for summary judgment or, in the
 9 alternative, partial summary judgment, in its favor as to Plaintiff RICARDO
 10 BERMUDEZ VAQUERO’s (“Plaintiff”) remaining claims in his Operative
 11 Complaint– the class-certified first cause of action for failure to pay minimum wages,
 12 individual fourth cause of action for failure to timely pay wages at termination, the
 13 class-certified fifth cause of action for failure to provide accurate itemized wage
 14 statements, the class-certified sixth cause of action under Business and Professions
 15 Code section 17200, and the seventh causes of action for violations of the California
 16 Private Attorney General Act (“PAGA”).

17 This Motion is made following the conference of counsel pursuant to Local
 18 Rule 7-3, which took place at least 10 days prior to the filing of this Motion. *See*
 19 Declaration of Scott Lidman filed concurrently herewith, ¶¶ 10-11.¹

20 Defendants seek summary judgment as to all of Plaintiff’s remaining claims or,
 21 in the alternative, partial summary judgment as to some or all of the issues below on
 22 the following grounds:

23 **ISSUE NO. 1:** Plaintiff’s first cause of action for failure to pay minimum
 24 wages to Sales Associates fails as a matter of law because all of the tasks he claims
 25 were performed by Sales Associates but uncompensated are in fact related to sales and
 26 therefore properly compensated through Defendant’s commission pay system.

27 _____
 28 ¹ The Declaration of Scott M. Lidman is attached as Exhibit 1 to the Compendium of
 Evidence filed concurrently herewith.

1 **ISSUE NO. 2:**² To the extent Plaintiff's first cause of action for failure to
 2 pay minimum wages to Sales Associates is based on the allegation that Sales
 3 Associates spent time participating in sales meetings and attendance at same was
 4 uncompensated, it fails as a matter of law because attendance at sales meetings is in
 5 fact related to sales and therefore properly compensated through Defendant's
 6 commission pay system.

7 **ISSUE NO. 3:** To the extent Plaintiff's first cause of action for failure to
 8 pay minimum wages to Sales Associates is based on the allegation that Sales
 9 Associates spent time participating in product training modules which time was
 10 uncompensated, it fails as a matter of law because participating in product training
 11 modules is in fact related to sales and therefore properly compensated through
 12 Defendant's commission pay system.

13 **ISSUE NO. 4:** To the extent Plaintiff's first cause of action for failure to
 14 pay minimum wages to Sales Associates is based on the allegation that Sales
 15 Associates spent time wrapping purchased items which time was uncompensated, it
 16 fails as a matter of law because wrapping purchased items is in fact related to sales
 17 and therefore properly compensated through Defendant's commission pay system.

18 **ISSUE NO. 5:** To the extent Plaintiff's first cause of action for failure to
 19 pay minimum wages to Sales Associates is based on the allegation that Sales
 20 Associates spent time assembling and/or disassembling furniture and were
 21 uncompensated, it fails as a matter of law because assembling and/or disassembling
 22 furniture to the extent it even happens is in fact related to sales and therefore properly
 23 compensated through Defendant's commission pay system.

24 **ISSUE NO. 6:** To the extent Plaintiff's first cause of action for failure to
 25 _____
 26 ² To the extent the Court finds that some but not all of the tasks alleged by Plaintiff are
 27 sales-related and, thus, were not properly compensated through Defendant's
 28 commission pay system, Defendant moves for partial summary judgment as to each of
 the various tasks identified by Plaintiff, as well as partial summary judgment as to the
 other independent issues identified herein and in Defendant's other moving papers.

1 pay minimum wages to Sales Associates is based on the allegation that Sales
2 Associates spent time carrying purchased items to customers' cars and was
3 uncompensated, it fails as a matter of law because carrying purchased items to
4 customers' cars to the extent it even happens is in fact related to sales and therefore
5 properly compensated through Defendant's commission pay system.

6 **ISSUE NO. 7:** To the extent Plaintiff's first cause of action for failure to
7 pay minimum wages to Sales Associates is based on the allegation that Sales
8 Associates spent time performing "zone recovery" duties, including alleged
9 "stocking," and was uncompensated, it fails as a matter of law because performing
10 "zone recovery" duties is in fact related to sales and therefore properly compensated
11 through Defendant's commission pay system.

12 **ISSUE NO. 8:** To the extent Plaintiff's first cause of action for failure to
13 pay minimum wages to Sales Associates is based on the allegation that Sales
14 Associates spent time "training" other Sales Associates and was uncompensated, it
15 fails as a matter of law because "training" other Sales Associates was only performed
16 in connection with actual sales duties and therefore properly compensated through
17 Defendant's commission pay system.

18 **ISSUE NO. 9:** Plaintiff's fourth cause of action for waiting time penalties
19 under California Labor Code Section 203 fails as a matter of law because Plaintiff
20 cannot show that Defendant "willfully" failed to pay Plaintiff's all wages due upon his
21 termination.

22 **ISSUE NO. 10:** Plaintiff's fifth cause of action for wage statement penalties
23 under California Labor Code Section 226 (based on Defendant's alleged failure to pay
24 all minimum wages owed) fails as a matter of law because Sales Associates' wage
25 statements accurately reflect the wages that Defendant actually paid to Sales
26 Associates.

27 **ISSUE NO. 11:** Plaintiff's fifth cause of action for wage statement penalties
28 under California Labor Code Section 226 (based on Defendant's alleged failure to pay

1 all minimum wages owed) fails as a matter of law because Plaintiff cannot show that
 2 Defendant “knowing[ly] and intentional[ly]” failed to provide accurate wage
 3 statements.

4 **ISSUE NO. 12:** Plaintiff’s sixth cause of action for violation of the Unfair
 5 Business Practice Act, California Business & Professions Code Sections 17200-17208
 6 is entirely derivative of his first cause of action for failure to pay minimum wages;
 7 therefore, because that claim fails as a matter of law insofar as all of the tasks Plaintiff
 8 claims were performed by Sales Associates but uncompensated are in fact related to
 9 sales and therefore properly compensated through Defendant’s commission pay
 10 system, so too does Plaintiff’s sixth cause of action for violation of the Unfair
 11 Business Practice Act, California Business & Professions Code Sections 17200-
 12 17208.

13 **ISSUE NO. 13:** Plaintiff’s seventh cause of action for violation of the Private
 14 Attorneys General Act, California Labor Code Section 2698, *et seq.*, fails as a matter
 15 of law because Plaintiff failed to move for class certification of said claim which is
 16 improper under federal procedural rules which apply in this instance.

17 **ISSUE NO. 14:** Plaintiff’s seventh cause of action for violation of the Private
 18 Attorneys General Act, California Labor Code Section 2698, *et seq.*, to the extent it is
 19 based on and derivative of his first cause of action for failure to pay minimum wages
 20 fails as a matter of law. This is because the first cause of action for failure to pay
 21 minimum wages fails as a matter of law insofar as all of the tasks Plaintiff claims were
 22 performed by Sales Associates but uncompensated are in fact related to sales and
 23 therefore properly compensated through Defendant’s commission pay system.

24 This Motion is based upon this Notice, the Memorandum of Points and
 25 Authorities and Request for Judicial Notice (and all exhibits attached thereto) filed
 26 concurrently herewith, the Compendium of Evidence which contains the Declarations
 27 of Scott M. Lidman, Jessie De La Pena, Gary Donovan, Hicham El Ghadban, Glen
 28 Meyers, Joseph Kunnell, Elizabeth Bell, Evelia Gomez, Virginia Flores, Henry

1 Nguyen, and John Santos, and all of the Exhibits attached thereto, as well as all other
2 papers and records on file with the Court in this action and such oral argument as may
3 be presented during the hearing of this Motion.

4 DATED: June 19, 2017

5
6 /s/ SCOTT M. LIDMAN
7 J. KEVIN LILLY
8 SCOTT M. LIDMAN
9 LITTLER MENDELSON, P.C.
A Professional Corporation
Attorneys for Defendant
STONELEDGE FURNITURE LLC

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